

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS No 422 & 423 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHUMI PACKAGING

Versus

DHORAJI MUNICIPALITY

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Appearance:

MR SURESH M SHAH for Petitioner

MR PB MAJMUDAR for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/04/98

ORAL JUDGEMENT

Heard Mr S M Shah, learned Advocate for the petitioner and Mr P B Majmudar, learned Advocate for the respondent-Municipality.

2. By the impugned order dated 20.2.1998, the 2nd Extra Asstt.Judge, Gondal has refused to interfere with the order of the trial court rejecting the plaintiff's application for injunction and dismissed the appeal.

3. It is contended by Mr S M Shah, learned Advocate that the respondent-Municipality has no authority to charge the octroi as the plaintiff-petitioner is an infant industry and the same has been granted exemption

by the Government. Both the Courts below have found that the plaintiff-firm is a new industry. However, the learned Judge refused to grant injunction only on the ground that balance of convenience is not in favour of granting stay. Similarly, no irreparable loss is likely to be caused to the plaintiff if the injunction is not granted. On the other hand, Mr P B Majmudar, learned Advocate appearing for the respondents submits that the petitioner has adopted the modus operandi of changing the partnership firm by changing partners, and therefore, it cannot be said that the plaintiff-petitioner is an infant industry. He has invited my attention to a decision of this Court dated 9.12.1997 in Civil Revision Application No.1576/97 wherein in an identical situation, this Court refused to interfere in the Revision Application. However, it was directed that the trial court to expedite the hearing. Mr Majmudar submits that the course adopted in the said case may also be adopted in the present case. Mr S M Shah, learned advocate states that the present case is different to that case, inasmuch as in the said case, it was found that the some partners were common to those in the firms who are already granted exemption. Therefore, there was serious disputes with respect to infancy of the industry. But in the present case, there is absolutely nothing to show that the present industry is not an infant industry. He further submits that the documents have been produced which clearly shows that the present industry is an infant industry.

4. Mr Majmudar also contended that the it is the exclusive right of the Municipality to impose tax under section 99 of the Gujarat Municipalities Act. He further submits that it is of course true that it is subject to General or Special orders of the State Government. He further submits that this general or special powers does not empower the State to grant exemption, in the area where the tax has already been levied by the Municipality. He has also invited my attention to section 101 of the Gujarat Municipalities Act, which provides procedure prior to imposing of tax. The contention of Mr Majmudar is that the Municipality is not bound by the decision of the State Government, granting exemption to infant industry. Mr S M Shah, learned Advocate states that there is no substance in the contention of Mr Majmudar. He submits that the power of the State Government under section 99 is unfettered. In my view, it will not be appropriate for me to express any opinion on this aspect at this stage, else it may prejudice the main suit. Suffice it to say that a serious arguable issue is involved. Further, keeping in view the decision of the Apex Court in the case of

SILIGURI MUNICIPALITY v. AMALENDU DAS & ORS., reported in AIR 1984 SC 653, I am not inclined to interfere with the impugned order in exercise of powers under section 115 CPC. In view of the aforesaid, it is considered desirable to adopt the course which has been adopted by this Court in Civil Revision Application No.1596/97 decided on 9.12.1997.

4. Thus, the impugned order passed by the Appellate Court stands confirmed as aforesaid with the following directions:

- i. "The trial Court is directed to hear and decide dispose of the same accordingly preferably within a period of six months from the date of the receipt of writ of this order.
- ii. The trial Court shall decide the suit without being influenced by the order passed by the appellate court as well as this Court and strictly on evidence and merits of the matter before the trial court.
- iii. The respondent Municipality will submit to the trial court monthly statements of collection of octroi from the petitioner till the suit is decided by the trial court."

Subject to the aforesaid, Rule is discharged.

msh

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